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| APPLICATION NO.            | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|----------------------------|-------------|----------------------|---------------------|------------------|
| 10/679,138                 | 10/03/2003  | Tanya L. Niemeyer    | 59673-52            | 3651             |
| 22504                      | 7590        | 05/12/2006           | EXAMINER            |                  |
| DAVIS WRIGHT TREMAINE, LLP |             |                      | EVERHART, CARIDAD   |                  |
| 2600 CENTURY SQUARE        |             |                      | ART UNIT            |                  |
| 1501 FOURTH AVENUE         |             |                      | PAPER NUMBER        |                  |
| SEATTLE, WA 98101-1688     |             |                      | 2891                |                  |

DATE MAILED: 05/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/679,138

Applicant(s)

NIEMEYER, TANYA L.

Examiner

Caridad M. Everhart

Art Unit

2891

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 and 39-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 and 39-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2-27-2006 has been entered.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5,15,16,17,18,28,29,30,31,32, and 39-44 are rejected under 35 U.S.C. 102(e) as being anticipated by Degani (US 2005/0038619A1).

Degani discloses a method for analyzing MRI contrast images(paragraph 0005 and 0006) and the analysis is done by machine and is a dynamic analysis and is both space and time dependent(paragraph 0005 and 0007). The process is contrast enhanced(paragraph 0011). The initial increase in intensity following the contrast

administration is detected(paragraph 0057). Following this, the washout behavior of the tissue volume exhibiting washout behavior is analyzed(paragraph 0069 relates pixels to initial wash-in intensity and paragraph 0051 relates volume to pixel intensity, so that the volume is related to initial behavior in paragraph 0069, and the washout behavior is then analyzed as disclosed in paragraph 0057). The imaging is of the breast(paragraph 0005). Pixels are identified as associated with a malignancy(paragraph 0031), and as cited above, pixels are identified with voxels. Figures 13, 14, and 15 show three types of wash out behavior, with 14 showing plateau and 13 showing enhancement and 15 showing washout. The rate of change of the washout is an important parameter in detecting the malignancy, and the rate of change is the slope(paragraph 0005). The rate of change in signal intensity is an important parameter in detecting breast masses(paragraph 0005 and 0056) and an intensity function is calculated(paragraph 0056). The output is in the form of a curve with the intensity points calculated from 3 time points (3TP images) according to the method taught by Degani(Fig. 20). Degani further teaches software, which is computer readable medium for carrying out the calculations described and including the normalization calculations shown in paragraph 0084 (paragraph 0110).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 6-14<sup>and</sup> 19-27~~are~~ are rejected under 35 U.S.C. 103(a) as being unpatentable over Desani as applied to claim 1 above.

Degani is silent with respect to the value of the slope recited and the steps as recited of comparing a slope to a threshold value.

Although Degani is silent with respect to the steps of comparing the slope, it would have been obvious to one of ordinary skill in the art at the time of the invention that Degani encompasses this step, as Degani discloses that there is a calibration map(paragraph 0010) that is calculated and therefore that values are compared by the apparatus and that the intensity function is one of the values calculated and therefore a calibration map would be generated for this value(paragraph 0056 and 0071) and that the slope of values are calculated and compared with the calculated value is disclosed by that the rate of change, which is the slope, is one of the parameters that is calculated and compared(paragraph 0070).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have chosen the recited value of the slope because the slope is a variable of the art, as shown by Degani in paragraph 0005 and in Fig. 13, 14, and 15 as cited above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Caridad M. Everhart whose telephone number is 571-272-1892. The examiner can normally be reached on Monday through Fridays 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, B. Baumeister can be reached on 571-272-1722. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CARIDAD EVERHART  
PRIMARY EXAMINER

C. Everhart  
5-6-2006